

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Herb Hyman/797-1016

SUBJECT: Resolution

AFFECTED DISTRICT: District 2

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING THE BID FOR CONSTRUCTION OF A CONCESSION BUILDING AT NOVA HIGH SCHOOL STADIUM.

REPORT IN BRIEF: A competitive bid was conducted for the construction of a concession building at Nova High School stadium. The Town sent out specifications to twelve (12) prospective bidders. Additionally, the bid was advertised state-wide in Florida Bid Reporting and nationally in BidNet and also posted on the Town's web site. The Town received ten (10) responses (nine (9) bids and one (1) "no bid" response). The project architect recommended an award to the second lowest bidder (see attached letter from Synalovski Gutierrez dated September 8, 2003). Several members of the Bid Specification Committee were not in agreement with the architect's recommendation. Therefore, the bid documents were sent to the Town Attorney's Office for a legal opinion. The Town's Attorney recommends an award to the lowest bidder (see attached letter dated September 25, 2003). The recommendation is for The Redland Company, Inc. as the lowest responsive and responsible bidder in accordance with the legal opinion from the Town Attorney's Office.

PREVIOUS ACTIONS: Not applicable

CONCURRENCES: The recommended award has been reviewed by the Public Works/Capital Projects Director, the Town Attorney's Office and the Bid Specification Committee who concur with the decision to award to The Redland Company, Inc.

FISCAL IMPACT:

Has request been budgeted? yes

If yes, expected cost: \$230,886.00

Account Name: Capital Improvement Program-Nova Stadium Improvements

Account

Additional Comments: Not applicable

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s):

Procurement Authorization

Bid Tabulation

Synalovski Gutierrez letter dated September 8, 2003

Letter from Town Attorney's Office dated September 25, 2003

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING THE BID FOR CONSTRUCTION OF A CONCESSION BUILDING AT NOVA HIGH SCHOOL STADIUM.

WHEREAS, the Town is in need of construction services to build a concession building at Nova High School stadium; and

WHEREAS, the Town solicited sealed bids for such construction services; and

WHEREAS, after review, the Town Council wishes to accept the bid from The Redland Company, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council hereby accepts the bid from The Redland Company, Inc. for construction services to build a concession building at Nova High School stadium in the amount of \$230,886.00.

SECTION 2. The Town Council hereby authorizes the expenditure from the Capital Improvement Program-Nova Stadium Improvements Account.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2003

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2003

TOWN OF DAVIE PROCUREMENT AUTHORIZATION

ACCOUNT NUMBER, BUDGET ITEM & DESCRIPTION APPROXIMATE COST
030-114-513-6580 CONCESSION Bldg. AT \$240,000
NWA STADIUM IMPROVEMENTS NWA High Stadium
METHOD OF PROCUREMENT (check the one that applies)

- ☐ Open Competitive Bidding
☐ Piggyback on Contract Number _____
☐ Sole Source
☐ Request For Proposals

SPECIFICATIONS & LIST OF VENDORS MUST BE ATTACHED

Signed

Bruce Bennett
Department Head

Have Funds been Reserved PERM. 29994

Date 7/24/03 Signed

Signed

[Signature]
Town Administrator

BIDS SUBMITTED	
VENDOR	COST
THE REDLAND COMPANY	\$230,886.00
DOUG AMOS CONSTRUCTION	234,350.00
COASTAL CONTRACTING	256,600.00
SPATES CONSTRUCTION	256,166.00
PIONEER CONTRACTING	291,700.00
LAMBERT BROS.	308,241.00
CORAL-TECH ASSOC.	312,500.00
WEISS & WOLFRICH	330,336.00
LOBAN CONSTRUCTION	344,260.00
WALBRIDGE ALDINGER	NO BID

Signed

Hub Kymon
Procurement Manager

TOWN ADMINISTRATOR'S RECOMMENDATION

Vendor	Cost
THE REDLAND COMPANY	\$230,886.00

Signed _____
Town Administrator

BID OPENING REPORT

BID NAME: NOVA H.S. CONCESSION BLDG.

TIME: 2:02 PM

BID NUMBER: B-03-81

DATE: 9/4/03

ESTIMATED COST: \$240,000

NO.	CONTRACTOR'S NAME	BID AMOUNT	RANK
1.	WALBRIDGE ALDINGER	No Bid	—
2.	THE REDLAND COMPANY	\$230,886.00	1
3.	LOBMAN CONSTRUCTION	\$244,260.00	9
4.	LAMBERT BROS.	\$308,241.00	6
5.	COASTAL CONTRACTING	\$256,000.00	3
6.	CORALTECH ASSOC.	\$362,500.00	7
7.	SPADES CONSTRUCTION	\$256,166.00	4
8.	DOUG AMOS CONST.	\$234,350.00	2
9.	Pioneer Contracting	\$291,700.00	5
10.	Weiss & Woodrich	\$320,326.00	8

REMARKS

A. base
B.

NOTE: THE ABOVE BID AMOUNTS HAVE NOT BEEN CHECKED, AND BID TOTALS ARE SUBJECT TO CORRECTION AFTER THE BIDS HAVE BEEN COMPLETELY REVIEWED.

THIS IS ONLY A FINANCIAL RANKING OF ALL THE BIDS RECEIVED. THE USING DEPARTMENT IS RESPONSIBLE FOR REVIEWING THE BIDS FOR COMPLIANCE WITH ALL THE BID SPECIFICATIONS PRIOR TO SUBMITTAL OF LETTER OF RECOMMENDATION.

PURCHASING OFFICIAL: [Signature]
WITNESS: [Signature]

DATE: 9/4/03
DATE: 9/4/03

SYNALOVSKI GUTIERREZ ROMANIK ARCHITECTS, INC.

Manuel Synalovski, AIA • Jorge Gutierrez, AIA • Merrill Romanik, AIA • Carlos V. Gonzalez, AIA • Pamela Krayter, AIA • Nikolay Ryaboy

September 8, 2003

Bruce Bernard, Director of Public Works
Town of Davie
6091 Orange Drive
Davie, Florida

Re: Nova High School Concessions Building
Bid No: B-03-81
Davie, Florida

Dear Mr. Bernard:

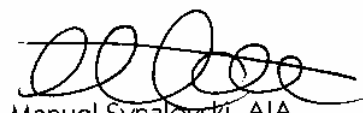
We are the Architect of Record of the above referenced project. As requested by your Office, we have reviewed the Bids submitted for consideration for the completion of the project.

At this time, it is of concern that the lowest Bid has been submitted by The Redland Company, Inc., a Contractor with extraordinary land development experience and absolutely no building construction projects completed in the last five (5) years, as evidenced in Attachment B of the referenced Bid.

Further, from the Bid Form submitted, it is evident that The Redland Company, Inc., will perform a limited scope of site work and be responsible solely for the General Conditions of the proposed Bid. That being the case, it is our opinion that the next lowest bidder should be considered for the completion of the proposed work which is solely a building construction project with very minor site work.

In advance, we thank you for this opportunity to be of assistance. Do not hesitate to call me should you have any further questions with the above

Respectfully,


Manuel Synalovski, AIA
President



Architecture • Planning • Interior Design


MONROE D. KIAR
TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
(954) 584-9770

MEMORANDUM

DATE: September 25, 2003

TO: Herb Hyman, Procurement Manager

CC: Mayor and Councilmembers
Tom Willi, Town Administrator

FROM: Monroe D. Kiar, Town Attorney 

RE: Bid Award/ Nova Concession Building project
Control Number: 030900

Pursuant to your request, this office has reviewed the bid specification documents relating to the above referenced project and has conducted legal research relative to the legality of dismissing the bid of the lowest bidder. As indicated within Section 255.20 (1) (b) F.S, a contract award for the construction of public buildings or structures where the projected total construction costs will exceed \$200,000.00 must be awarded to the "lowest qualified responsive and responsible bidder". Although Article 18.1 of the project manual specifies that the owner reserves the right to accept the bid which is the lowest and best and in the best interest of the owner, the present situation clearly meets the above stated statutorily derived criterion and the contract must thereby be awarded to the lowest qualified and responsive bidder.

As you indicated, the Architect of Record has expressed his opinion that the Town should not utilize the contractor who entered the lowest bid due to the fact that the lowest bidder has "no building construction projects completed in the last five (5) years". The Architect of Record also cited the fact that the lowest bidder will be responsible solely for general conditions of the proposed bid and the vast majority of the work will be completed by subcontractors. Accordingly, it was the Architect of Record's opinion that the next lowest bidder should be considered for the completion of the contract. It should further be noted that the bid forms completed by the lowest bidder indicates that the lowest bidder has not utilized the subcontractors to be used for the construction of the project in the past.

As stated above, the Florida Statutes dictate that a bid contract must be awarded to the lowest qualified responsive and responsible bidder. Thus, the owner's rights, as stated within Article 18.1 of the project manual must be interpreted to comport with

applicable Florida law to ensure its legality. As such, it must be clear that the criterion to be utilized in contracts such as the one at bar is not the "best bid" or the "bid that is in the best interest of the owner". Instead, the contract must be awarded to the lowest qualified responsive and responsible bidder. The 3rd DCA, in *City of Sweetwater v. Solo Construction*, recently held that the City's attempt to award a contract to the most responsible bidder as opposed to the lowest responsible bidder was devoid of any legal basis and was thus arbitrary and capricious and contrary to Section 255.20 F.S. The Court further maintained that an award to a contractor other than the lowest responsible, reasonable bidder would unfairly circumvent the intent of competitive bidding standards. *City of Sweetwater v. Solo Const. Corp.*, 823 So.2d 798 (Fla. 3rd DCA, 2002).

Section 255.20, F.S states that the project must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county or municipal ordinance...and in accordance with the contract documents. In determining whether the lowest bidder must be awarded the contract it is clearly necessary to insure that the lowest bidder is qualified, responsive, and reasonable. The Architect of Record has not argued that the lowest bidder was not responsive in submitting its bid to the Town. Therefore, the only question at bar is whether the lowest bidder is qualified and reasonable...these two terms are not mutually exclusive and may be determined together.

The qualification of a bidder is referenced in Section 15.1 of the project manual and states that a "bidder will be required to show, to the complete satisfaction of the owner, that they have the necessary facilities, equipment, ability and financial resources to perform the work in a satisfactory manner within the time specified. No contract will be awarded except to responsible contractors and businesses capable of performing the class of work contemplated." This office found no further basis for determining whether a bidder is qualified. Because the courts have shown a clear preference towards the lowest bidder in a competitive bidding project and the lowest bidder was not held to be unresponsive, it is incumbent upon the Town to show that the lowest bidder is not qualified and reasonable.

The Architect of Record's opinion that the lowest bidder should not be selected is based solely on the fact that the lowest bidder has no building construction experience in the last five years and will utilize subcontractors for most of the work. With regard to the utilization of subcontractors, it should be noted that the project manual does not prohibit the utilization of subcontractors nor does it clearly state that the utilization of subcontractors will detrimentally affect a bidder's chances of being selected. Accordingly, bidders would not be able to reasonably conclude from reading the project manual that the utilization of various subcontractors would negatively impact their chances of being selected and thereby render their bid unreasonable or otherwise affect their qualification. Thus, the utilization of subcontractors by the lowest bidder would not seemingly make the lowest bidder unqualified.

With regard to the fact that the lowest bidder has no building construction experience within the last five years, the project manual does not indicate that a bidder without experience will be deemed to be unqualified. Similarly, lack of experience in

building construction does not appear to be determinative in evaluating whether a bidder has the necessary qualifications to perform the contract. As such, the Town must rely on the bidder's work experience and reputation in determining whether the bidder has the ability to perform the work in a satisfactory manner. Upon review of the bid forms submitted by the lowest bidder, it appears that the lowest bidder has previously completed numerous private and public sector projects, including three public bid projects within Broward County. The lowest bidder has also indicated that it has not failed to complete work awarded to it. Accordingly, based on the lowest bidder's former performance and provided that the Town receives positive recommendations from the references cited, it is the opinion of this office that the lowest bidder may reasonably be expected to perform the contract in a satisfactory manner. Therefore, based on the facts presented in the present case, it is the opinion of this office that the lowest bidder has not been clearly shown to be unqualified, unreasonable, or unresponsive and should be selected for the contract.